

REMARKS

The Examiner required restriction of one of the following two inventions:

- I. Claims 1-18, drawn to a method of forming a layer; and
- II. Claims 19-29, drawn to a method of forming a capacitor.

The Applicants respectfully contend that the present Restriction, which merely separates the pending claims into two groups, does not establish a *prima facie* case sufficient to support the current restriction requirement. Restriction at 2. In particular, the Applicants respectfully contend that the present Restriction does not provide any showing or appropriate explanation that the identified groups of claims have a separate classification, a separate status in the art, or a different field of search. The Applicants respectfully contend, therefore, that the restriction requirement should be withdrawn.

In the event that the restriction requirement is not withdrawn, Applicants elect, with traverse, to prosecute Group II, including claims 19-29, in the present application. Applicants specifically reserve the right to file a divisional application directed to non-elected claims 1-18 and contend that claim 1 is a generic claim that reads on the elected species.

With respect to Applicants' traversal, Applicants respectfully direct the Examiner's attention to M.P.E.P. § 803 which states:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine on the merits, even though it includes claims too distinct or independent invention." (emphasis added)

There are two criteria for a proper requirement for restriction. The invention should be independent or distinct, and

“2) there must be a serious burden on the Examiner if a restriction is not required. See M.P.E.P. § 803.092, 806.04 A through J, 808.01(a) and 808.02.”

Applicants respectfully submit that given the intimate relationship between the dielectric layer used in forming the capacitor as recited in claims 19-29 and the method of forming such a layer as recited in claims 1-18, Examiner would not be unduly burdened if forced to examine the claims of both Group I and Group II in the same application. Indeed, the Applicants respectfully contend that method of forming a layer as recited in claims 1-18 is a subcombination of the combined method for forming a capacitor incorporating such a layer as the dielectric. As such, the Applicants respectfully maintain that the method of forming a layer is incorporated in and is essential to the method of forming the capacitor and should not, therefore, be subject to a restriction requirement. MPEP § 806.05(c)(II).

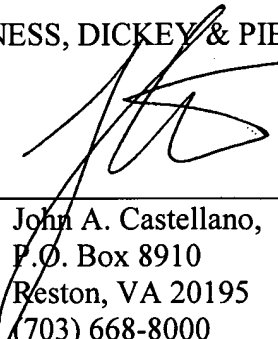
For all of the above stated reasons, reconsideration and withdrawal of the pending restriction/election requirement and favorable action on all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By



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